

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	Criminal No. 05-10102-JLT
	)	
	)	
JOHN BRUENS, MARY STEWART, MARC	)	
SIROCKMAN, MELISSA VAUGHN	)	
	)	
Defendants.	)	
_____	)	

UNITED STATES' MOTION FOR LEAVE  
TO FILE EX PARTE DECLARATIONS UNDER SEAL

The United States of America, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, respectfully moves the court for an order authorizing it to file the attached Declarations of Mary Elizabeth Carmody and Michael Loucks, *ex parte* and under seal.

Defendants in the above-captioned matter have filed a motion seeking an order barring the testimony of Adam Whitehurst ("Whitehurst") at trial. They claim that the United States misused the grand jury by obtaining the sworn testimony of Whitehurst after indictment and that the government did so for the primary purpose of trial preparation.

The government disputes the defendants' contentions, and has, simultaneously with this motion, filed an opposition to the defendants' motion. In its opposition, the government has made

clear that the sole purpose of seeking the testimony of Whitehurst post-indictment of the defendants in this case was to determine whether or not to bring charges against another individual. In support of its opposition, the government submitted a non-privileged declaration of Assistant U.S. Attorney Mary Elizabeth Carmody.

The attached declarations set forth the government's thought processes concerning the investigation and contemplated indictment of this individual, as well as supporting documentation. This information is protected by the attorney work product and deliberative process privileges and should not be revealed to defense counsel. Nonetheless, the government believes that the attached information is important for the Court's determination as to whether the government's use of the grand jury post-indictment of the instant defendants was proper: i.e., that the government's only purpose was to gather prosecutable evidence to seek an indictment of another individual not charged in this indictment.

Submission of these materials *ex parte* and under seal is particularly important in this context - both to protect the government's executive authority in determining who should be prosecuted and under what circumstances, and to protect the name and reputation of the individual who, although subjected to a criminal investigation, ultimately was not prosecuted.

The government notes that the First Circuit and other courts have previously utilized this procedure when the government was accused of grand jury misuse post-indictment. See, In re: Grand Jury Proceedings, 814 F.2d 61 (1<sup>st</sup> Cir. 1987); United States v. Badger, 983 F.2d 1442 (7<sup>th</sup> Cir. 1993); In re: Grand Jury Proceedings, 722 F.2d 303 (6<sup>th</sup> Cir. 1983); In re: John Doe Corporation, 675 F.2d 482 (2d Cir. 1982); In re: Grand Jury Subpoena, 615 F.Supp. 958 (D.Mass. 1985).

Accordingly, based upon the foregoing, the government requests that the court grant its motion, and permit the filing of the Declarations of Mary Elizabeth Carmody and Michael J. Loucks *ex parte* and under seal.

By: /s/ Susan M. Poswistilo  
SUSAN M. POSWISTILO  
MARY ELIZABETH CARMODY  
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I hereby certify that the above document (without attachments) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated:10/17/2006

/S/ Susan M. Poswistilo  
SUSAN M. POSWISTILO  
Assistant United States Attorney